

House Study Bill 718

HOUSE FILE _____
BY (PROPOSED COMMITTEE ON
JUDICIARY BILL BY
CHAIRPERSON PAULSEN)

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to civil and criminal procedure including the
2 issuance of and violations of certain civil protective orders
3 and criminal no-contact orders.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
5 TLSB 5484HC 81
6 rh/je/5

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1 1 Section 1. Section 236.7, subsection 1, Code 2005, is
1 2 amended to read as follows:
1 3 1. A proceeding under this chapter shall be held in
1 4 accordance with the rules of civil procedure, except as
1 5 otherwise set forth in this chapter and in chapter 664A, and
1 6 is in addition to any other civil or criminal remedy.
1 7 Sec. 2. Section 562A.27A, subsection 3, paragraph a, Code
1 8 2005, is amended to read as follows:
1 9 a. The tenant seeks a protective order, restraining order,
1 10 order to vacate the homestead, or other similar relief
1 11 pursuant to chapter 236, 598, 664A, or 915, or any other
1 12 applicable provision which would apply to the person
1 13 conducting the activities causing the clear and present
1 14 danger.
1 15 Sec. 3. Section 562B.25A, subsection 3, paragraph a, Code
1 16 2005, is amended to read as follows:
1 17 a. The tenant seeks a protective order, restraining order,
1 18 order to vacate the homestead, or other similar relief
1 19 pursuant to chapter 236, 598, 664A, or 915, or any other
1 20 applicable provision which would apply to the person
1 21 conducting the activities causing the clear and present
1 22 danger.
1 23 Sec. 4. Section 598.41, subsection 3, paragraph j, Code
1 24 Supplement 2005, is amended to read as follows:
1 25 j. Whether a history of domestic abuse, as defined in
1 26 section 236.2, exists. In determining whether a history of
1 27 domestic abuse exists, the court's consideration shall
1 28 include, but is not limited to, commencement of an action
1 29 pursuant to section 236.3, the issuance of a protective order
1 30 against the parent or the issuance of a court order or consent
1 31 agreement pursuant to section 236.5, the issuance of an
1 32 emergency order pursuant to section 236.6, the holding of a
1 33 parent in contempt pursuant to section ~~236.8~~ 664A.7, the
1 34 response of a peace officer to the scene of alleged domestic
1 35 abuse or the arrest of a parent following response to a report
2 1 of alleged domestic abuse, or a conviction for domestic abuse
2 2 assault pursuant to section 708.2A.
2 3 Sec. 5. NEW SECTION. 664A.1 DEFINITIONS.
2 4 1. For purposes of this chapter:
2 5 a. "No-contact order" means a court order issued in a
2 6 criminal proceeding requiring the defendant to have no contact
2 7 with the alleged victim, persons residing with the alleged
2 8 victim, or members of the alleged victim's immediate family,
2 9 and to refrain from harassing the alleged victim, persons
2 10 residing with the alleged victim, or members of the alleged
2 11 victim's family.
2 12 b. "Protective order" means a protective order issued
2 13 pursuant to chapter 232, a court order or court-approved
2 14 consent agreement entered pursuant to chapter 236, including a
2 15 valid foreign protective order under section 236.19,
2 16 subsection 3, a temporary or permanent protective order or
2 17 order to vacate the homestead under chapter 598, and an order

2 18 that establishes conditions of release or is a protective
2 19 order or sentencing order in a criminal prosecution arising
2 20 from a domestic abuse assault under section 708.2A.
2 21 c. "Victim" means a person who has suffered physical,
2 22 emotional, or financial harm as a result of a public offense,
2 23 as defined in section 701.2, committed in this state.

2 24 Sec. 6. NEW SECTION. 664A.2 APPLICABILITY.
2 25 1. This chapter applies to no-contact orders issued for
2 26 violations or alleged violations of sections 708.2A, 708.7,
2 27 708.11, 709.2, 709.3, and 709.4, and any other public offense
2 28 for which there is a victim.

2 29 2. A protective order issued in a civil proceeding shall
2 30 be issued pursuant to chapter 232, 236, or 598. Punishment
2 31 for a violation of a protective order shall be imposed
2 32 pursuant to section 664A.7.

2 33 Sec. 7. NEW SECTION. 664A.3 ENTRY OF TEMPORARY NO=
2 34 CONTACT ORDER.

2 35 1. When a person is taken into custody for contempt
3 1 proceedings pursuant to section 236.11 or arrested for any
3 2 public offense referred to in section 664A.2, subsection 1,
3 3 and the person is brought before a magistrate for initial
3 4 appearance, the magistrate shall enter a no-contact order if
3 5 the magistrate finds both of the following:

3 6 a. Probable cause exists to believe that any public
3 7 offense referred to in section 664A.2, subsection 1, or a
3 8 violation of a no-contact order, protective order, or consent
3 9 agreement has occurred.

3 10 b. The presence of or contact with the defendant poses a
3 11 threat to the safety of the alleged victim, persons residing
3 12 with the alleged victim, or members of the alleged victim's
3 13 family.

3 14 2. A no-contact order issued pursuant to this section
3 15 shall be issued in addition to any other conditions of release
3 16 imposed by a magistrate pursuant to section 811.2. The no=
3 17 contact order has force and effect until it is modified or
3 18 terminated by subsequent court action in a contempt proceeding
3 19 or criminal or juvenile court action and is reviewable in the
3 20 manner prescribed in section 811.2. Upon final disposition of
3 21 the criminal or juvenile court action, the court shall
3 22 terminate or modify the no-contact order pursuant to section
3 23 664A.5.

3 24 3. A no-contact order requiring the defendant to have no
3 25 contact with the alleged victim's children shall prevail over
3 26 any existing order which may be in conflict with the no=
3 27 contact order.

3 28 4. A no-contact order issued pursuant to this section
3 29 shall restrict the defendant from having contact with the
3 30 victim, persons residing with the victim, or the victim's
3 31 immediate family.

3 32 Sec. 8. NEW SECTION. 664A.4 NOTICE OF NO-CONTACT ORDER.

3 33 1. The clerk of the district court or other person
3 34 designated by the court shall provide a copy of the no-contact
3 35 order to the victim pursuant to this chapter and chapter 915.

4 1 2. The clerk of the district court shall provide a notice
4 2 and copy of the no-contact order to the appropriate law
4 3 enforcement agencies and the twenty-four-hour dispatcher for
4 4 the law enforcement agencies in the same manner as provided in
4 5 section 236.5. The clerk of the district court shall provide
4 6 a notice and copy of a modification or vacation of a no=
4 7 contact order in the same manner.

4 8 Sec. 9. NEW SECTION. 664A.5 MODIFICATION == ENTRY OF
4 9 PERMANENT NO-CONTACT ORDER.

4 10 If a defendant is convicted of, receives a deferred
4 11 judgment for, or pleads guilty to a public offense referred to
4 12 in section 664A.2, subsection 1, or is held in contempt for a
4 13 violation of a no-contact order issued under section 664A.3 or
4 14 for a violation of a protective order issued pursuant to
4 15 chapter 232, 236, or 598, the court shall either terminate or
4 16 modify the temporary no-contact order issued by the
4 17 magistrate. The court may continue the no-contact order in
4 18 effect for a period of five years from the date the judgment
4 19 is entered or the deferred judgment is granted, regardless of
4 20 whether the defendant is placed on probation.

4 21 Sec. 10. NEW SECTION. 664A.6 MANDATORY ARREST FOR
4 22 VIOLATION OF NO-CONTACT ORDER.

4 23 1. If a peace officer has probable cause to believe that a
4 24 person has violated a no-contact order issued under this
4 25 chapter, the peace officer shall take the person into custody
4 26 and shall take the person without unnecessary delay before the
4 27 nearest or most accessible magistrate in the judicial district
4 28 in which the person was taken into custody.

4 29 2. If the peace officer is investigating a domestic abuse
4 30 assault pursuant to section 708.2A, the officer shall also
4 31 comply with sections 236.11 and 236.12.

4 32 Sec. 11. NEW SECTION. 664A.7 VIOLATION OF NO=CONTACT
4 33 ORDER OR PROTECTIVE ORDER == CONTEMPT OR SIMPLE MISDEMEANOR
4 34 PENALTIES.

4 35 1. Violation of a no-contact order issued under this
5 1 chapter or a protective order issued pursuant to chapter 232,
5 2 236, or 598, including a modified no-contact order, is
5 3 punishable by summary contempt proceedings.

5 4 2. A hearing in a contempt proceeding brought pursuant to
5 5 this section shall be held not less than five and not more
5 6 than fifteen days after the issuance of a rule to show cause,
5 7 as determined by the court.

5 8 3. If held in contempt for a violation of a no-contact
5 9 order or a modified no-contact order for a public offense
5 10 referred to in section 664A.2, subsection 1, or held in
5 11 contempt of a no-contact order issued during a contempt
5 12 proceeding brought pursuant to section 236.11, the person
5 13 shall be confined in the county jail for a minimum of seven
5 14 days. A jail sentence imposed pursuant to this subsection
5 15 shall be served on consecutive days. No portion of the
5 16 mandatory minimum term of confinement imposed by this
5 17 subsection shall be deferred or suspended. A deferred
5 18 judgment, deferred sentence, or suspended sentence shall not
5 19 be entered for a violation of a no-contact order or modified
5 20 no-contact order and the court shall not impose a fine in lieu
5 21 of the minimum sentence, although a fine may be imposed in
5 22 addition to the minimum sentence.

5 23 4. Violation of a no-contact order entered for the offense
5 24 or alleged offense of domestic abuse assault in violation of
5 25 section 708.2A or a violation of a protective order issued
5 26 pursuant to chapter 232, 236, or 598 constitutes a public
5 27 offense and is punishable as a simple misdemeanor.
5 28 Alternatively, the court may hold a person in contempt of
5 29 court for such a violation, as provided in subsection 3.

5 30 5. A person shall not be held in contempt or convicted of
5 31 violations under multiple no-contact orders, protective
5 32 orders, or consent agreements, for the same set of facts and
5 33 circumstances that constitute a single violation.

5 34 Sec. 12. NEW SECTION. 664A.8 EXTENSION OF NO=CONTACT
5 35 ORDER.

6 1 Upon the filing of an application by the state which is
6 2 filed within ninety days prior to the expiration of a modified
6 3 no-contact order, the court shall modify and extend the no=
6 4 contact order for an additional period of five years, unless
6 5 the court finds that the defendant no longer poses a threat to
6 6 the safety of the victim, persons residing with the victim, or
6 7 members of the victim's family. The number of modifications
6 8 extending the no-contact order permitted by this section is
6 9 not limited.

6 10 Sec. 13. Section 708.2A, subsection 5, paragraph a, Code
6 11 2005, is amended to read as follows:

6 12 a. A conviction for, deferred judgment for, or plea of
6 13 guilty to, a violation of this section which occurred ~~more~~
~~6 14 than six years~~ prior to the date of the violation charged July
6 15 1, 1987, shall not be considered in determining that the
6 16 violation charged is a second or subsequent offense.

6 17 Sec. 14. Section 708.2A, subsection 7, Code 2005, is
6 18 amended to read as follows:

6 19 7. If a person is convicted for, receives a deferred
6 20 judgment for, or pleads guilty to a violation of this section,
6 21 the court shall modify the no-contact order issued upon
6 22 initial appearance in the manner provided in section ~~236.14~~
6 23 664A.5, regardless of whether the person is placed on
6 24 probation.

6 25 Sec. 15. Section 709.22, subsection 3, paragraph c,
6 26 unnumbered paragraph 1, Code Supplement 2005, is amended to
6 27 read as follows:

6 28 The right to seek a no-contact order under section ~~709.20~~
6 29 664A.3 or 915.22, if your attacker is arrested for sexual
6 30 assault.

6 31 Sec. 16. Section 901.5, subsection 7A, Code Supplement
6 32 2005, is amended by striking the subsection.

6 33 Sec. 17. Section 907.3, subsection 1, paragraph i, Code
6 34 Supplement 2005, is amended to read as follows:

6 35 i. The offense is a conviction for or plea of guilty to a
7 1 violation of section ~~236.8~~ 664A.7 or a finding of contempt
7 2 pursuant to section ~~236.8~~ or 236.14 664A.7.

7 3 Sec. 18. Section 907.3, subsection 2, paragraph b, Code
7 4 Supplement 2005, is amended to read as follows:

7 5 b. Section ~~236.8~~ 664A.7 or for contempt pursuant to
7 6 section ~~236.8 or 236.14~~ 664A.7.
7 7 Sec. 19. Section 907.3, subsection 3, paragraph b, Code
7 8 Supplement 2005, is amended to read as follows:
7 9 b. A sentence imposed pursuant to section ~~236.8 or 236.14~~
7 10 664A.7 for contempt.
7 11 Sec. 20. Section 915.50, subsection 3, Code 2005, is
7 12 amended to read as follows:
7 13 3. The right to receive a criminal no-contact order upon a
7 14 finding of probable cause, pursuant to section ~~236.14~~ 664A.3.
7 15 Sec. 21. Sections 236.8, 236.14, 708.12, and 709.20, Code
7 16 2005, are repealed.

7 17 EXPLANATION

7 18 This bill relates to civil and criminal procedure,
7 19 including the issuance of and violations of civil protective
7 20 orders and criminal no-contact orders.
7 21 The bill consolidates certain provisions relating to civil
7 22 protective orders and criminal no-contact orders into new Code
7 23 chapter 664A.
7 24 The bill provides that a protective order issued pursuant
7 25 to Code chapters 232, 236, and 598 shall continue to be issued
7 26 in such cases; however, violations of such orders and consent
7 27 agreements shall be enforced under the provisions of new Code
7 28 section 664A.7, which consolidates current Code sections 236.8
7 29 and 236.14 relating to violations of such protective orders.
7 30 The bill further consolidates current Code sections 708.2A,
7 31 subsection 7, 708.12, 709.20, and 901.5, subsection 7A,
7 32 relating to the issuance of and violations of both temporary
7 33 and permanent no-contact orders in criminal cases in which a
7 34 defendant has been arrested for the crimes of harassment in
7 35 violation of Code section 708.7, stalking in violation of Code
8 1 section 708.11, sexual abuse in the first degree, sexual abuse
8 2 in the second degree, and sexual abuse in the third degree in
8 3 violation of Code sections 709.2, 709.3, and 709.4, and
8 4 domestic abuse assault in violation of Code section 708.2A.
8 5 The bill defines a "no-contact order" to mean a court order
8 6 issued in a criminal proceeding which shall require the
8 7 defendant to have no contact with the alleged victim, persons
8 8 residing with the alleged victim, or members of the alleged
8 9 victim's immediate family, and to refrain from harassing the
8 10 alleged victim, persons residing with the alleged victim, or
8 11 members of the alleged victim's family. The bill defines a
8 12 "protective order" to mean a protective order issued pursuant
8 13 to Code chapter 232, a court order or court-approved consent
8 14 agreement entered pursuant to Code chapter 236, including a
8 15 valid foreign protective order under Code section 236.19,
8 16 subsection 3, a temporary or permanent protective order or
8 17 order to vacate the homestead under Code chapter 598, and an
8 18 order that establishes conditions of release or is a
8 19 protective order or sentencing order in a criminal prosecution
8 20 arising from a domestic abuse assault.
8 21 The bill provides that a conviction for, deferred judgment
8 22 for, or plea of guilty to a violation of the crime of domestic
8 23 abuse assault in violation of Code section 708.2A which
8 24 occurred prior to July 1, 1987, shall not be considered in
8 25 determining that the violation charged is a second or
8 26 subsequent offense. Current law does not allow consideration
8 27 of such offenses which occurred more than six years prior to
8 28 the date of the domestic abuse assault.
8 29 LSB 5484HC 81
8 30 rh:rj/je/5